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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,772	10/01/2003	Daniel J. Swistak	2313	9121

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THE LAW OFFICES OF STEVEN MCHUGH, LLC
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EXAMINER
MAYO, TARA L

ART UNIT	PAPER NUMBER
3671	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/28/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	**Application No.** 10/677,772	**Applicant(s)** SWISTAK ET AL.
	Examiner Tara L. Mayo	**Art Unit** 3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 September 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *21-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *08 October 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date *20060509,20060925,20061016*.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 16 October 2006 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the citations are not proper for consideration. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

2. The information disclosure statement filed 09 May 2006 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the citations are not proper for consideration. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Response to Amendment

3. The Declaration filed 27 September 2006 is defective because it does not state the patent rule under which it is executed.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 21 through 25 and 29 through 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiTullio (U.S. Patent No. 6,854,925 B2) in view of Kothmann (U.S. Patent No. 5,046,892) and Nichols et al. (U.S. Patent No. 4,759,661).

DiTullio '925, as seen in Figure 2, shows:

with regard to claims 21 and 29,

an arch shape cross section leaching chamber (12) having an inwardly sloped and upwardly curving sidewall running from a horizontal base to an imperforated top; the sidewall having a multiplicity of slots (30) spaced apart and running lengthwise along the chamber (col. 4, lines 39 through 41), wherein the slots have a height.

DiTullio '925 fails to teach:

with regard to claims 21 and 29,

the slots having an inward flare;

the slots having a horizontal opening dimension greater than the vertical opening dimension; and

the slots having a downwardly sloped axis; and

with regard to claims 22, 30 and 33,

the included angle of flare being between 2 and about 12 degrees;

with regard to claims 23, 31 and 33,

the slot height measured at the interior of the chamber being in the range of about 0.105 inch to about 0.200 inch;

with regard to claims 24, 25, 32 and 33,

the slope of the basic axes of the slots being about 12 degrees as measured from the horizontal.

Kothmann '892, as seen in Figures 1 and 3, discloses an apertured pipe segment (10) having tapered slots (12) made by an injection molding process for forming smooth pipe walls which are less likely to become clogged (col. 1, lines 40 through 44; col. 1, lines 62 through 66; col. 2, lines 24 through 29; col. 3, lines 47 through 51; and col. 4, lines 3 through 8), wherein the slots comprise slot walls which diverge from the outside of the pipe segment inwardly thereby precluding large sized soil particles from entering the interior of the pipe segment (col. 4, lines 20 through 21).

Nichols et al. ‘661, as seen in Figures 1, 3, 7 and 9, show a leaching chamber device (20) comprising a plurality of downwardly sloped slots (26) for preventing fine soil particles from infiltrating the interior of the device (col. 4, lines 44 through 47), wherein the slope of the slots is about 20° (col. 6, lines 31 through 32), wherein the height (h_1) of the slots measured at the interior of the chamber is about 0.25 inch. The slots of the device taught by Nichols et al. ‘661 have a horizontal opening dimension greater than the vertical opening dimension.

With regard to claims 21 and 29, it would have been obvious to one having ordinary skill in the art of drainage at the time the invention was made to modify the device shown by DiTullio ‘925 such that the perforations would flare inwardly in view of the advantages taught by Kothmann ‘892. The motivation would have been to preclude clogging of the perforations by large sized soil particles.

With regard to claims 21 and 29, it would have been obvious to one having ordinary skill in the art at the time of invention to make the slots of the device shown by DiTullio ‘925 such that they would have a horizontal opening dimension greater than the vertical opening dimension as taught by Nichols et al. '661 since the same would result in an increase in the rate of flow passing through the chamber walls.

With regard to claims 21, 29 and 32, it would have been obvious to one having ordinary skill in the art of drainage at the time the invention was made to modify the device shown by DiTullio '925 such that the basic axes of the perforations would slope downwardly from the inside to the outside of the chamber sidewall as taught by Nichols et al. '661. The motivation would have been to direct the effluent downwardly as it exits the interior of the chamber.

With regard to claims 22, 24, 25, 30 and 33, in view of the teachings of Nichols et al. '661 (col. 6, lines 31 through 32) in combination with DiTullio '925 and Kothmann '892, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the included angle of flare between 2 and about 12 degrees, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With regard to claims 23 and 31, it would have been obvious to one having ordinary skill in the art of drainage at the time the invention was made to modify the device taught by the combination of DiTullio '925 and Kothmann '892 such that slot heights would be in the range of 0.105 inch to about 0.200 inch since Nichols et al. '661 expressly teaches a height of about 0.25 inch. The motivation would have been to effect a desired rate of discharge from the chamber.

7. Claims 26 through 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiTullio (U.S. Patent No. 6,854,925 B2) in view of Kothmann (U.S. Patent No. 5,046,892) and Nichols et al. (U.S. Patent No. 4,759,661) as applied to claim 21 above, and further in view of Schlafly (U.S. Patent No. 980,442).

DiTullio '925, as seen in Figure 2, further teaches:

with regard to claims 26 and 27,

an outwardly extending base flange (28).

DiTullio '925 fails to teach:

with regard to claims 26 and 27,

the base flange having an upwardly extending lengthwise fin, the extension of the basic axes of at least some of said multiplicity of slots intersecting the fin; and

the slots having a horizontal opening dimension greater than the vertical opening dimension.

With regard to claim 26, it would have been obvious to one having ordinary skill in the art at the time of invention to make the slots of the device shown by DiTullio '925 such that they would have a horizontal opening dimension greater than the vertical opening dimension as taught by Nichols et al. '661 since the same would result in an increase in the rate of flow passing through the chamber walls.

With regard to claims 26 and 27, it would have been obvious to one having ordinary skill in the art of drainage at the time the invention was made to further modify the device taught by the combination of DiTullio '925, Kothmann '892 and Nichols et al.

‘661 such that the flange of the chamber would have an upwardly extending fin as taught by Schlafly ‘442 and the extended axes of some of the perforations would intersect the fin. The motivation would have been to facilitate anchoring of the device and to provide additional means for controlling and retaining effluent as desired.

With regard to the recitation of a “molded” leaching chamber in claim 26, the method of forming the device is not germane to the issue of the patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Response to Arguments

8. Applicant's arguments filed 25 September 2006 have been fully considered but they are not persuasive.

In response to Applicant’s statements regarding the rejection of claims 21 and 29 modification of the slots shown by DiTullio ‘925 such that they would flare inwardly as taught by Kothmann ‘892, the Examiner contends that Kothmann ‘892 expressly teaches motivation for the modification in col. 1 at lines 40 through 44 and 62 through 66 wherein the prior art reference discusses clogging.

In response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Specifically, Applicant’s discussion of the round holes shown by DiTullio ‘925 does not take into account the teaching by Nichols et al. ‘661 used to modify the shape of the slots.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art of fluid control and treatment would be motivated to grade a portal in a leaching chamber since the same affects the rate of fluid flow.

In response to Applicant's statement that DiTullio '925 fails to teach a curving sidewall, the Examiner contends that the upper portion of the sidewall of the prior art device is curved.

Applicant's statements regarding the shape of the slots are moot in view of the newly applied teaching of Nichols et al. '661 for slots having a horizontal opening dimension greater than the vertical opening dimension.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a single slot v. a double slot) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to Applicant's argument that the disclosure of DiTullio '925 for particles in the water flowing into the chamber and out the sidewall precludes modification such that the slots would be inwardly flaring as taught by Kothmann '892, the Examiner contends that the inwardly flaring slots would function to resist the entry of particles from the surrounding soil mass into the chamber.

Applicant's arguments based upon angles measured from the drawings are irrelevant because the drawings are not to scale.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

tlm
21 December 2006

TARA L MAYO
PATENT EXAMINER